Strong

Cotton 143
Oct. 2. 1877

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 602.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

LEON RHEIMS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 7, 1876.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Leon Rheims and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, defendant, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the part aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October term, eighteen hundred and seventy-six, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

JOHN I. DAVENPORT, *Clerk.*

The foregoing writ is hereby allowed.

ALEX'R S. JOHNSON, *Cir J.*

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Leon Rheims, defendant in error. Writ of error.

Due and timely of service of a copy of the within writ of error is hereby admitted.

GEO. W. PALMER,
Att'y for Def't & Resp't in Error.

Filed Oct. 17, 1876.

2 UNITED STATES OF AMERICA,
Southern District of New York:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to forty-five, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Leon Rheims, defendant in error, against Chester A. Arthur, plaintiff in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this first day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

3 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of

America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, A. D. 1876, to wit, of the 7th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that heretofore, to wit, on the 10th day of November, 1874, in April term, A. D. 1874, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came Leon Rheims, by George W. Palmer, their attorney, and brought into the said court, before the aforesaid judges thereof then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

4 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit, of the day of March, in the year of our Lord one thousand eight hundred and seventy-six.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Leon Rheims, plaintiffs in this suit, come here into court, and by G. W. Palmer, his attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 10th day of November, 1874, an action was commenced in the supreme court of the State of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiff, against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said supreme court on the same day. That the defendant afterwards, by George Bliss, esquire, his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the 8th day of February, in the year of our Lord one thousand eight hundred and seventy-five, the said action was in due form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided; and the clerk of the said supreme court did thereupon return said writ with the summons aforesaid, and did file the same in this court according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the said plaintiff accordingly, by G. W. Palmer, his attorney, complain of the defendant in this suit being in custody, &c., of a plea of trespass on the case for promises, for that whereas the said defendant heretofore, to wit, on the day of the date of this declaration, to wit, at the city of New York, in the district aforesaid, was indebted to the said plaintiff in the sum of fifteen hundred and $\frac{00}{100}$ dollars, lawful money of the United States of America, for duties on certain merchandise, to wit, artificial flowers, imported into and entered at the collection district of

the United States for the city of New York, on or about the following dates, to wit, July 15th, 17th, 21st, 27th, 23rd, 29th, & Aug. 2nd, 11th, and 12th, in the year one thousand eight hundred and seventy-four, in the following ships or vessels, to wit: Silesia, R. I. & W'm Odir, Neckar, Hohenzollern, Donau, Mosel, America, & Hermann, from Paris, unlawfully demanded, exacted, and received, at the city of New York aforesaid, in the district aforesaid, by the said defendant, then collector of the customs for the district aforesaid, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiff under protest in writing in due form of law.

And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money above mentioned, when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiff in the further sum of fifteen hundred *thousand* dollars lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant, and for other money by the said defendant before that time had and received to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant (although often afterwards requested so to do) has not as yet paid the said several sums of money above mentioned, or any or either of them or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of three thousand dollars, and therefore the said plaintiff bring suit, &c.

GEO. W. PALMER,
Attorney for the Plaintiff, 113 *Broadway, N. Y.*

5 (Indorsed:) U. S. circuit court. L. Rheims vs. C. A. Arthur. Declaration. G. W. Palmer, 113 B'way, attorney for plaintiffs.

To GEO. BLISS, Esq., *Def't's Att'y:*

SIR: Please to take notice that on filing a declaration in this cause, with a copy whereof you are hereby served, a rule has been entered in the book of common rules, kept in the office of the clerk of this court, at the city of New York, requiring the within-named defendant to plead to said declaration in twenty days after service of a copy thereof and notice of said rule on his attorney, or judgment, &c.

New York, March 16th, 1876.

G. W. PALMER,
Attorney for Plaintiff.

Due service of a copy of within declaration and above notice is hereby admitted, this 16th day of March, 1876.

Def't's Att'y.

6 *Bill of particulars.*

Circuit court of the United States for the southern district of New York.

LEON RHEIMS
vs.
C. A. ARTHUR, COLLECTOR OF THE CUSTOMS of the United States at the port of New York.

SIR: Please to take notice that the following is a bill of particulars of items of the plaintiff's demand in the above-entitled action, to wit, moneys exacted by compulsion and duress, and under color of the revenue laws of the United States, by the defendant as collector as aforesaid, from and paid by the plaintiff on merchandize imported by the plaintiff, as per schedule hereto annexed, with legal interest on said amount from the date of payment thereof as aforesaid.

Dated New York, Aug. 20, 1874.

Yours, truly,

GEO. W. PALMER,
Plaintiff's Attorney, 48 *Broad st., N. Y.*

To GEO. BLISS, Esq.,
Defendant's Attorney.

Schedule.

Currency.

Name of importer.	Description of merchandise.	Place whence imported.	Name of vessel.	Invoice.	Entry at custom-house.	Payment of duties.	Filing protest.	Appeal to Sect. of Treasury.	Decision on appeal.	Am't of excess claimed.
Leon Rheims	Artificial flowers, &c	Paris	Thuringia	Jan'y 23	Feb. 10	Feb. 10	Feb. 26	Feb. 26	May 21	130 73
										143 75
Do	do	do	Hansa	" 26	" 10	" 11	M'ch 14	M'ch 14	Apr. 23	114 21
										112 40
Do	do	do	Holsatia	Feb. 6	" 19	" 19	" 7	" 7	" 22	162 04
										186 10
Do	do	do	Rhein	" 9	" 24	" 24	" 30	" 30	June 10	116 66
										234 45
Do	do	do	Hammonia	" 13	M'ch 2	M'ch 2	May 5	May 5	" 24	238 23
										138 40
Do	do	do	Main	" 15	" 2	" 2	" 5	" 5	" 27	321 85
										147 00
Do	do	do	Frisia	" 26	" 12	" 13	" 5	" 5	" 26	131 26
										170 30
Do	do	do	Mosel	M'ch 2	" 16	" 16	" 5	" 5	" 27	160 11
										211 10
Do	do	do	Donau	Feb. 22	" 14	" 14	" 23	" 23	" 29	130 10
										262 55
Do	do	do	Thuringia	M'ch 5	" 19	" 19	" 23	" 23	None	146 84
										245 00
Do	do	do	America	" 9	" 23	" 23	" 30	" 30	do	237 74
										150 15
Do	do	do	Westphalia	" 12	" 28	" 28	Apr. 6	Apr. 6	May 12	399 46
										124 55
Do	do	do	Hansa	" 17	Apr. 2	Apr. 3	" 6	" 6	June 6	313 37
										432 50
Do	do	do	Pommerania	" 19	" 2	" 3	" 6	" 6	None	114 49
										129 10
Do	do	do	Rhein	" 30	" 14	" 15	May 8	May 8	June 26	238 90
										174 65
Do	do	do	Ohio	Feb. 22	M'ch 14	M'ch 14	M'ch 23	M'ch 23	April 22	110 49
										96 09
Do	do	do	Weser	Jan'y —	Feb. 11	Feb. 15	" 30	" 30	May 20	212 40
										125 23
Do	do	do	Herrman	Jan'y 18	" 3	" 4	Feb. 9	Feb. 9	" 4	339 40

9 (Indorsed:) United States circuit court. L. Rheims vs. C. A. Arthur. Bill of particulars. Geo. W. Palmer, plaintiff's attorney, 48 Broad street, New York. Dated New York, Aug. 20, 1874.

10 *Plea.*

U. S. circuit court, southern district of New York.

CHESTER A. ARTHUR } *ads.* L. RHEIMS. }

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiff in this suit has above thereof declared against the said defendant, and of this he puts himself upon the country; and the said plaintiff does the like, &c.

GEORGE BLISS,
Defendant's Attorney.

To GEO. W. PALMER, Esq.,
Plaintiff's Attorney.

(Indorsed:) 3939. U. S. circuit court. Chester A. Arthur, ads. L. Rheims. Plea. George Bliss, attorney for defendant.

Due service of a copy of within is hereby admitted.
New York, March 17, 1876.

GEO. W. PALMER.

11 Therefore the issue above joined is ordered to be tried at a circuit court appointed to be held at the United States court-rooms, on the 3rd Monday of October, A. D. 1875.

And now, to wit, on the 11th day of February, A. D. 1876, being as yet of said October term, before the Hon. William J. Wallace, sitting as circuit judge, come the said parties, by their attorneys; and the said judge before whom said issues were tried hath sent here his record, had before him in these words, to wit:

Afterwards, to wit, on the same day and place, before the said judge, come the plaintiffs and defendant, by their attorneys, and the jurors of the jury also come, who to speak the truth in the matter within contained being duly chosen, tried, and sworn, upon their oaths say that said defendant did undertake and promise, in manner and form as said plaintiffs have above declared against him, and they assess the damages at $695 $\frac{59}{100}$ gold dollars principal, and $90 $\frac{83}{100}$ interest, over and
12 above their costs and charges, and for these costs and charges the sum of .

13 Therefore it is considered that the said plaintiffs do recover against the said defendant their said debt, and also fifty-one and $\frac{97}{100}$ for their damages which they have sustained, as well on occasion of the detaining of the said debt as for their costs and charges by them about their suit in this behalf expended by the said court now here adjudged to the said plaintiffs, and with their assent, which said debt, damages, costs, and charges in the whole amount to six hundred ninety-five and $\frac{86}{100}$ ($695.89) gold dollars, and one hundred forty-two and $\frac{80}{100}$ ($142.80) currency dollars.

And the said defendant in mercy, &c.

Judgment signed this 7 day of October, 1876.

J. M. DEUEL,
D'y Clerk.

14 (Indorsed:) U. S. circuit court. Leon Rheims et al. vs. Chester A. Arthur. Judgment record. Geo. Bliss, U. S. attorney. U. S. No. 10, p. 339. Filed Oct. 7, 1876.

15 *Bill of exceptions.*

U. S. circuit court.

LEON RHEIMS
vs.
CHESTER A. ARTHUR.

Be it remembered that the issues in this case came on to be tried at a stated term, to wit, the October term, 1875, of this court, held at the city of New York, before Hon. W'm J. Wallace, district judge, sitting as circuit judge, and a jury duly empanelled and sworn on the 10th day of February, 1876, at said term, the parties being represented by their counsel, and continued until the 11th day of February, 1876, when said trial was concluded as hereinafter stated.

Thereupon to maintain the issues on the part of the plaintiff, the latter produced evidence showing the importation from foreign countries into the port of New York, of certain merchandize upon which the defendant as collector of the said port, and claiming to act
16 under the laws of the United States, exacted a duty of fifty per centum ad valorem under and by virtue of the paragraph reading "Artificial and ornamental feathers and flowers, or parts thereof, of whatever material composed, not otherwise provided for," in section 12, act of Congress entitled "An act to increase duties on imports, and for other purposes," approved June 30th, 1864.

The plaintiff claimed that the merchandize in question was only liable to a duty of ninety per centum of said fifty per cent., because of the reduction at that rate provided by the paragraph reading "On all manufactures of cotton of which cotton is the component material of chief value" in section 2 of the act of Congress entitled, "An act to reduce duties on imports, and to reduce internal taxes, and for other purposes," approved June 6th, 1872.

The plaintiff protested upon the payment of the duty as assessed and stated the foregoing claim as a ground of protest. The plaintiff also appealed to the Secretary of the Treasury, who affirmed the decision
17 of the collector, and thereupon this action was brought, the issue being whether the plaintiff's merchandize was dutiable when imported at fifty per cent. ad valorem, or at ninety per cent. of fifty per cent. If the latter, then $695.89 gold and $90.83 currency had been exacted in excess.

The plaintiff then produced witnesses as follows:

HENRY HERRMAN, a dealer in artificial flowers, said he was familiar with the material out of which such goods were manufactured, and qualified himself to testify on that particular topic. The witness was shown by plaintiff's counsel a sample of merchandize not yet in evidence or testified about, and plaintiff's counsel were proceeding to question the witness in respect to said particular sample, and asked the witness what that sample was, when defendant's counsel objected to any exhibition of samples to the jury or as a foundation for questions to the witness by plaintiff's counsel, or to their production for any purpose in the case until the proper foundation had been laid; whereupon the following proceedings occurred:

The COURT. You may show a sample to the witness, and see if
18 he can identify it as a sample of the importation in question.

To this defendant's counsel objected on same grounds as above stated, and also as leading. The objection was overruled and defendant's counsel duly excepted.

The sample was then shown to witness and he was asked by plaintiff's counsel:

Q. Look at that sample and see if you can tell where it came from, and whether it is a sample of the goods in question.

Same objection, ruling, and exception.

A. I know it came from Paris.

Q. Where are these goods imported from?

A. From Paris.

Q. Can you produce any samples representing the goods that are included in these invoices and entries?

A. That is one of them.

Objected to. Defendant's counsel moves to strike out the answer.

The COURT. That is not a proper question under the circumstances. Witness has stated that all he knows about this particular sample is that it came from Paris.

Defendant's counsel objects to the witness' attention being
19 directed to any sample and any inquiries being made about that sample, until that sample is properly proved and the foundation is laid for such questions.

The COURT. Go on; ask the question, and I will rule upon it.

Defendant excepts.

Q. The sample which you hold in your hand, do you know in what importation it came from Paris to this country?

Objected to.

The COURT. You may answer.

The defendant excepts on the ground that it is irrelevant, immaterial, and incompetent, and that no proof has been made concerning the particular thing about which the witness is now to be examined, and no proper foundation is laid for the question. Objection overruled. Exception taken.

A. What cases I cannot tell. It came during the time we paid duties at 50 per cent.

Q. It came during the time these goods were coming on which
20 this action is brought?

A. Yes, sir.

Q. And is that a portion of the goods upon which the fifty per cent. duty was paid?

Objected to. Objection overruled. Exception taken.

By the court:

Tell us what you do know about this sample.

A. I know this sample is one of the flowers that we imported during the time we paid fifty per cent. duty.

A. How do you know it is?

A. I can tell by referring to our books. The back of the invoice, perhaps, will show it.

By Mr. Palmer:

Q. Have you already read them?

A. I did.

By the court:

You don't know what importation the goods involved here are, nor the values of them?

A. I do not. That piece of flower is one of the flowers we imported at the time we paid fifty per cent.

Q. But you don't know of what importation it is a sample?

21 A. No; I don't know what steamer it came on.

Plaintiff's counsel proposes to follow this up by showing that this is the only style or character of flowers they imported at all.

Defendant's counsel objects and insists that these samples be withdrawn.

Objection overruled. Exception taken.

Plaintiff's counsel then asked the witness to state of what material the flowers in the importations in question were composed.

Defendant's counsel objected, and asked the court to rule that the best evidence was the articles themselves, or samples thereof, and that secondary evidence should not be received until the failure to produce the article or samples of it had been properly explained. The court held otherwise and received the testimony, and defendant's counsel duly excepted.

The witness then referred to the sample above mentioned (still in his hands), and answered:

Iron, paper, and wire; the most of the value in the material is cotton.

Most of the flowers are made of cotton. There is a certain amount

22 of wire used to twist with the cotton, to finish them. They have to be stuffed sometimes. The paper is used to bunch the different branches together, simply wound around the stems to hold them together. The leaves and petals of the flowers are composed of cotton, and it is all cotton, except some little wire and the paper. The paper is wrapped around the cotton.

At this point the above mentioned sample was offered in evidence by plaintiff's counsel without farther proof.

Defendant's counsel objected that the sample was not properly proven to entitle it to be received in evidence.

Objection overruled, and defendant's counsel duly excepted.

The direct examination of the witness was then concluded, and the witness was cross-examined at length; in the course of which, among other things, he said:

Q. Is it possible for you to produce any samples of the pkgs. included in this suit?

A. It is possible; we sometimes keep a stock run from two or 3 or 4 or 5 or 6 yrs.

Q. Could they be identified?

A. They can. The part around the stems of the flower is tissue-

23 paper; the blossoms are cotton—that is, are muslin. Muslin is purchased by the sheet or yard in this market, of color originally white, of a varying quality. In the manufacture of the flowers this muslin is cut into very small pieces, by machinery, and the leaves and petals are made up out of these pieces, being colored, stiffened, and shaped, and otherwise manipulated to make a flower or leaf. The leaves are of muslin. A little wire is twisted in with cotton for the stem. There is a paint or varnish and wax also used in the manufacture. I do not deal in dry goods; I deal in some textile fabrics by the yard, viz, silks, laces, velvets, &c., but not in cottons.

Q. (By defendant's counsel.) As a general thing, do the dealers in artificial flowers deal in cotton goods?

Objected to by plaintiff's counsel as immaterial. Objection sustained, and defendant's counsel duly excepted.

Defendant's counsel then offered to prove by competent testimony that dealers in artificial flowers do not deal in cotton goods, but are a special class of dealers recognized in trade and commerce, and
24 that dealers in cotton goods do not usually deal in artificial flowers, which is a separate line of trade from textile fabrics manufactured of cotton.

This evidence was excluded as immaterial and irrelevant, and defendant's counsel duly excepted to such exclusion.

The evidence then on the part of the plaintiff proceeded to describe the artificial flowers in question, and said evidence tended to show as follows:

By M'r Palmer:

I hand you some samples of flowers.

M'r Tremain objects to plaintiff's counsel handing any samples to the witness. Objection overruled. Exception taken.

Q. What do you know about the samples that are now handed to you?

A. They are samples of the invoices we produce.

By the court:

You say those are samples of the goods which came direct from your importation?

A. They were picked from the goods which were received at that time.

By M'r Palmer:

Q. Since yesterday you found these samples in your stock,
25 which stock was produced from importations which are now in the suit?

A. I did.

Samples offered in evidence. It is conceded by defendant's counsel that these may be taken as samples of the importations in question.

One witness (Elias Hines) on his direct examination said that he was a manufacturer of artificial flowers, and had been engaged in the business for twenty years; that the flowers in question were made of Nainsook muslin.

Q. (By plaintiff's counsel.) What is Nainsook muslin made of?

Objected to by defendant as immaterial and irrelevant, which objection was overruled, and defendant's counsel duly excepted.

Evidence under this ruling was then produced by various witnesses showing that muslin was made of cotton.

The said witness (Hines) on his direct examination was further asked:

Q. (By plaintiff's counsel.) Take a bunch of these blossoms (be-
26 ing a sample of one of the importations in question) and state the relative proportions of the different materials of which these artificial flowers in question are composed?

Objected to by defendant's counsel as calling for an opinion from the witness, and an opinion without proper foundation having been laid for it.

The COURT. What would you have him state?

DEFENDANT'S COUNSEL. I would have him in the first place get at the quantities of the original materials and see whether he is able to say what the values of these materials are. If he is not able to do this, then no proper foundation is laid for the witness' opinion. This opinion merely is not competent evidence tending to prove the fact sought to be estab-

lished by such testimony. The enquiry, therefore, is objected to as immaterial and irrelevant and incompetent.

Objection overruled, and defendant's counsel duly excepted.

To the above question was then added by plaintiff's counsel, under this ruling, the request that the witness should state his opinion
27 of the relative proportions of the different materials in the sample then exhibited (being a sample in evidence).

The witness then responded:

"In this bunch I should say about eighty per cent. muslin and the rest paper and wire and wax and cotton. It is not all muslin, and there is cotton separate from the muslin, raw cotton which is wrapped up in the stems. I should say only about two per cent. of raw cotton and eighty per cent. of muslin; and the balance, eighteen per cent., for the wire and other materials used in the manufacture."

In some samples of the importations in question referred to by the witness, the proportion of cotton was less, say about seventy-five per cent., but in all of them over fifty per cent. would be muslin and raw cotton.

This witness was cross-examined at considerable length, and among other things said:

"The value of artificial flowers depends upon the way they are made, that is, the skill employed in their manufacture; and the workmanship more than any other element determines their value. The value
28 of a dozen such flowers as these would be fairly at wholesale, say $12.00 or one dollar a bunch. The market value of artificial flowers sometimes varies to exceed fifty per cent., depending on the fashions and seasons. Referring to such flowers as this, worth one dollar, I should say that twenty-five per cent. of the wholesale price would fairly represent the manufacturers' profit and $5.00 a dozen, or about 43 % would fairly represent the percentage of labor. As to the different materials in a bunch there is the value of boxes, about 4 cents. The value of the muslin @ 60 cents a yard (⅔ of a yard being used in one bunch) would be about 37½ cents; the value of the wire 2 cents; of the raw cotton 2 cents; of the paper 2 cents; of the wax 2 cents; of the gum one cent; of the coloring matter 5 cents. Thus, calling the value of the bunch one dollar, the value of the materials would aggregate about fifty-six cents, or about fifty-six per cent. at this calculation."

Q. (By defendant's counsel.) You have already stated the value of the labor to be represented by 43 %, and profit by 25 %, or 68 % for
29 both. The balance or 32 % *per cent.* therefore should represent the materials. Explain this if you can.

A. There is some labor in the coloring. The party who makes them does not color them.

Q. Well, include the coloring, and what would have to be added to your 43 per cent. for labor?

A. Five per cent., I think. That would make it 47 % for the labor; and calling the manufacturer's profit as before stated 25 %, would make in all 72 %; so that the balance of 28 % would be about right to represent the material. It thus results that the total value of all the materials in the flower as compared with the total value of the flower when made up is about 25 % of the total value of the flower; the balance, or 75 %, being represented by labor, workmanship, manufacturer's profit, and incidental expenses.

Q. (By defendant's counsel.) Beginning again new and starting with the result we have just arrived at, that the value of the materials is represented by about 25 %, and taking the value of the materials as

stated by you to be about 50 cents (or say 50 cents for convenience of calculation), what would be at that rate the value of that bunch? Would it not be $2.00 instead of one dollar as you have stated?

To this question the witness gave no answer, but repeated that the total value of the materials was 25 % of the total value of the flower.

And this closed the testimony of this witness.

Another witness (GRENVILLE CARTER) was then called by plaintiffs who testified that he was an examiner in the appraiser's department in the custom-house; that he had been there ten years, and it was his duty to examine artificial flowers and that the material of chief value in the artificial flower in question was muslin.

Q. What material is the muslin made of?

The objection to this question was renewed again at this point upon grounds already stated above in objection to a similar question. Objection overruled and defendant excepted.

It was testified then that muslin was made of cotton.

The defendant then renewed his offer to prove that the importation of artificial flowers was a special line of trade in this market.

This evidence was excluded and defendant's counsel duly excepted.

The defendant then renewed his offer to prove that the importation and sale of muslin and cotton goods of that character was a special line of trade in this market. This evidence was excluded and defendant's counsel duly excepted.

The foregoing comprise the substantial portions of the testimony, at the close of which defendant moved that the court direct a verdict for the defendant upon the ground that plaintiffs have not given proof tending to show that an illegal duty had been exacted, and that so far as appears from the testimony adduced the artificial flowers in question were correctly charged with duty at fifty per cent. ad valorem.

The court held otherwise and refused the motion, and defendant's counsel duly excepted.

Defendant's counsel then requested the court to instruct the jury:

1. That there was no competent evidence to show that the goods are "manufactures of cotton" in the tariff sense of that term.

The court declined so to charge and defendant's counsel duly excepted.

2. That if the jury find that the goods are not "manufactures of cotton," in the commercial or ordinary sense of that term, that then they will find a verdict for defendant.

The court declined so to charge, and defendant's counsel duly excepted.

The court ruled that it was a question of fact for the jury to determine, and it was the main question in the case, whether cotton was the component part of chief value of the importations in question, to which ruling defendant's counsel duly excepted.

Defendant's counsel then asked the court to charge the jury that the circumstance that a large proportion of the material of these artificial flowers is made of muslin is of no consequence in determining whether the cotton is the component part of chief value or not.

This request was denied, and defendant's counsel duly excepted.

The defendant's counsel requested the court to hold that for the purposes of this case the term "manufactures of cotton," in the act of June 6th, 1872, included only such articles as were dutiable,

as cotton goods, and of the class alluded to under section 6 of the above-cited act of June 30th, 1864, and section 1 of the act approved March 3d, 1865, entitled "An act amendatory of certain acts imposing duties upon foreign importations."

The court declined so to decide, and defendant's counsel duly excepted.

The court then charged the jury as follows:

GENTLEMEN: There seems to be no question upon the evidence here but that all the preliminary steps which it is necessary for the plaintiff to take in order to bring this action, and present the questions which he desires to present have been taken, and therefore, upon the evidence, the only question which I deem it necessary to submit to you is the question of fact whether the artificial flowers which were im-
34 ported by the plaintiffs were composed of materials of which cotton is the component of chief value. The only evidence upon that is the evidence of two witnesses, M'r Herman and M'r Elias Hines, the gentleman who testified this morning. The first witness, M'r Herman, has never manufactured artificial flowers. His opinion, therefore, is formed upon casual observation, more or less careful, perhaps, which dealers usually bestow upon the articles in which they deal. But *M'r Hines is a manufacturer of artificial flowers, and his testimony in this case deserves to be examined with more particularity. I understood him at first, and no doubt you did, to testify that the value of the cotton was 80 per cent. of the value of the entire material in the sample which was shown him. But upon the cross-examination he went into a more careful statement, and his testimony there presents an analysis in which he gives the various materials and labor upon which his conclusion is based. I do*
35 *not propose to refresh your recollection, because I have no doubt the witness testified so very recently that you will remember what he did testify to. I don't propose, therefore, to allude to his testimony upon the cross-examination, but I leave it for you to say, taking the cross-examination in consideration, whether you can come to the conclusion that the muslin and the cotton are less than half the value of the entire material of which the flowers are composed.*

Now, I think the affirmative is upon the plaintiff in this case to satisfy you that in the articles in question cotton is the component part of chief value. I have held during the trial (and I repeat it now for the purpose of enabling counsel to take exception to my ruling and present it perhaps more properly than it would be otherwise), *I have held that in arriving at this conclusion the element of labor of putting these materials together is to be entirely eliminated from the consideration of the case. You are simply to look at the cost of the materials in the condition*
36 *in which they are prior to putting them together in the form of flowers, and then you are to discard the cost of the labor in putting the materials into that condition, except so far as converting them from the raw material into a marketable condition; that is to say, to illustrate: these flowers, it appears, are composed partially of muslin, and that muslin is painted before it is put into flowers. The labor of painting the muslin is not to be taken into consideration, neither is the labor of converting the cotton into muslin to be taken into consideration;* but you are to ascertain what the value of the cotton was in its marketable original condition, in order to determine whether or not the cotton in these articles was the component of chief value.

I think, gentlemen, that this is all that it is necessary for me to suggest to you, and with these suggestions you may take the case.

If the plaintiff is entitled to recover, no question is made but that he is entitled to recover the sum of $695.88 principal, and $90.83 interest.

37 At the conclusion of the said charge, defendant's counsel excepted to that part thereof which refers to the testimony of M'r Hines, and beginning with that part which states that the court understood him to testify that the value of the cotton was 80 %, and to what follows upon his testimony as stated by the court. Also, to that part of the charge which instructs the jury that if they find that the muslin and cotton is less than half the entire material, then they must find for the plaintiff.

And defendant's counsel asked the court to leave it to the jury to find whether the muslin and cotton is less than half of the entire value of the artificial flowers as imported; and, if yea, the jury should find for the defendant.

This the court declined, and defendant's counsel duly excepted.

Defendant's counsel further excepted to that part of the charge which says that the element of labor is to be entirely eliminated, and that the jury are simply to look at the cost of the material prior to con-
38 verting it into flowers, and not the condition in which as a marketable commodity they enter into the value; also, to that part of the charge which says that neither is the labor in making the muslin to be taken into consideration in determining the value of the muslin, on the ground that no testimony had been presented on that subject.

(The portions of the charge severally excepted to as above stated are above indicated in italics.)

The jury thereupon rendered a verdict for $695.89 principal and $90.83 interest.

And inasmuch as the aforesaid several matters of fact and of law and the said several exceptions do not appear upon the record of said trial, therefore, on the prayer of said defendant, by his counsel, the said judge has signed, settled, and allowed the foregoing as and for the bill of exceptions in this case at the October term of said court as aforesaid, and directed the same to be filed as of the day of , 1876,
39 nunc pro tunc the day of the recording of the verdict as aforesaid.

W'M J. WALLACE,
U. S. Dist. Judge.

(Indorsed:) U. S. circuit court. Leon Rheims against Chester A. Arthur. Bill of exceptions. Filed Oct. 4, 1876.

40 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
ag'st
LEON RHEIMS, DEFENDANT IN ERROR.

Afterwards, to wit, on the third Monday in said term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Chester A. Arthur, by George Bliss, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid, there is error in the several rulings of the court, to which exception has been taken, and that, by the record aforesaid, it appears that judgment aforesaid, in form aforesaid given, was given for the said defendant

against the said plaintiff, whereas by law of the land the said
41 judgment ought to have been given for the said plaintiff in error against the said defendant in error; and the said plaintiff prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held as nothing, and that he, the plaintiff, may be restored to those things which he has lost by reason of said judgment.

GEORGE BLISS,
U. S. Att'y, for Pl'ff in Error.

(Endorsed:) U. S. Supreme Court. Southern district of New York. Chester A. Arthur, plaintiff in error, versus Leon Rheims, def't in error. Assignment of error. George Bliss, United States attorney for the southern district of New York. Filed Nov. 1, 1876.

42 UNITED STATES OF AMERICA, *ss:*

To Leon Rheims, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

ALEX. S. JOHNSON, *Cir. J.*

(Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Leon Rheims, defendant in error. Citation.

Due and timely notice of a copy of the within citation is hereby admitted.

GEO. W. PALMER,
Att'y for Def't & Resp't in Error.

Filed Oct. 17, 1876.

43 Supreme Court of the United States.

CHESTER A. ARTHUR, PL'FF IN ERROR,
vs.
LEON RHEIMS, DEF'T IN ERROR.

And afterwards, to wit, on the third Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-six, the said Leon Rheims, by Geo. W. Palmer, his attorney, freely comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid, and he prays that the said Supreme Court of judicature, before the justices thereof, now here, may proceed to examine as well the ecord and proceedings aforesaid as the matters aforesaid, above as-

signed for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

GEO. W. PALMER,
Att'y for Def't in Error.

STEPHEN G. CLARKE, *of Counsel.*

(Indorsed:) U. S. Supreme C't. No. 916. Chester A. Arthur, pl'ff in error, vs. Leon Rheims, def't in error. Joinder in error. George W. Palmer, att'y for def't in error. Filed 25 November, 1876.

(Indorsement on cover:) No. 602. Chester A. Arthur, collector of port of New York, plaintiff in error, v. Leon Rheims. S. New York C. C. U. S. Filed 7th November, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &c.,
vs.
LEON RHEIMS.
No. 602.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &c.,
vs.
LEON RHEIMS.
No. 602.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The issue is whether or not certain artificial flowers, made of iron, paper, wire, and cotton (muslin), the latter being the material of greatest value in the article, were entitled to the 10 per cent. reduction allowed by the act of June 6, 1872, c. 315, § 2 (17 Stats., 231), "on all manufactures of cotton, or of which cotton is the component part of chief value." They were assessed 50 per cent. *ad valorem*, under the act of June 30, 1864, c. 171, § 12 (13 Stats., 213), imposing that rate on "artificial and ornamental feathers and flowers, or parts thereof, of whatever material composed, not otherwise provided for," no deduction being made on account of the later act above mentioned. (Record, 7.)

The greater part of the market-value of the completed flower depends upon the degree of skill with which it is

made. Three-quarters of this value is in this labor, and only one-quarter in the tangible materials. (Record, 11, near bottom.)

ASSIGNMENT OF ERRORS.

1. The district attorney was not permitted to prove that dealers in artificial flowers do not deal in cotton goods, and the converse. (Record, 10, top, and 12, folio 31.) This refusal the plaintiff in error assigns for error; also, the following instructions and refusals to instruct, viz:

2. At the close of the testimony the defendant moved that the court direct a verdict for the defendant, upon the ground that plaintiffs have not given proof tending to show that an illegal duty had been exacted; and that, so far as appears from the testimony adduced, the artificial flowers in question were correctly charged with duty at 50 per cent. *ad valorem*.

The court held otherwise, and refused the motion, and defendant's counsel duly excepted. (Record, 12, folio 31.)

Defendant's counsel then requested the court to instruct the jury:

3. That there was no competent evidence to show that the goods are "manufactures of cotton," in the tariff sense of that term.

The court declined so to charge, and defendant's counsel duly excepted. (Record, 12, folio 32.)

4. That if the jury find that the goods are not "manufactures of cotton," in the commercial or ordinary sense of that term, that then they will find a verdict for defendant. (*Ib.*)

The court declined so to charge, and defendant's counsel duly excepted. (*Ib.*)

5. The court ruled that it was a question of fact for the jury to determine, and it was the main question in the case, whether cotton was the component part of chief value of the importations in question, to which ruling defendant's counsel duly excepted. (*Ib.*)

Defendant's counsel then asked the court to charge the jury that the circumstance that a large proportion of the material of these artificial flowers is made of muslin is of no consequence in determining whether the cotton is the component part of chief value or not.

This request was denied, and defendant's counsel duly excepted. (*Ib.*)

6. The defendant's counsel requested the court to hold that, for the purposes of this case, the term "manufactures of cotton," in the act of June 6, 1872, included only such articles as were dutiable as cotton goods, and of the class alluded to under section 6 of the above-cited act of June 30, 1864, and section 1 of the act approved March 3, 1865, entitled "An act amendatory of certain acts imposing duties upon foreign importations."

The court declined so to decide, and the defendant's counsel duly excepted. (Record, 12 and 13.)

7. The court then charged the jury, among other things, as follows:

"*I have held that in arriving at this conclusion the element of labor of putting these materials together is to be entirely eliminated from the consideration of the case. You are simply to look at the cost of the materials in the condition in which they are prior to putting them together in the form of flowers, and then you are to discard the cost of the labor in putting the materials into that condition, except so far as converting them from the raw material into a marketable condition; that is to say, to illustrate it:*

hese flowers, it appears, are composed partially of muslin, and that muslin is painted before it is put into flowers. The labor of painting the muslin is not to be taken into consideration, neither is the labor of converting the cotton into muslin to be taken into consideration; but you are to ascertain what the value of the cotton was in its marketable original condition, in order to determine whether or not the cotton in these articles was the component of chief value"; to which exception was taken. (Record, 13, lower quarter of page.)

BRIEF.

I.

Recurring once more to the decision of this court in Smythe *v.* Fiske (23 Wall., 381, top), it becomes apparent that the sixth assignment of error is good, and that the ruling therein mentioned should have been made. The sixth section of the act of June 30, 1864, c. 171 (13 Stats., 208–9), embraced every article *intended for tariff purposes* to be considered as made of cotton. These flowers, though cotton might be used in their make-up, even to the extent of a quarter part of their value, were not, in mercantile parlance and trade, deemed or dealt in as cotton goods, or manufactures of cotton. Evidence to this point was pertinent and admissible to show the proper construction to be given to the act of June 6, 1872, and should have been received.

Neither according to commercial designation, nor to tariff classification, are they considered manufactures of cotton. (See the act of June 30, 1864, c. 171, and the arrangement in R. S., sect. 2504, Schedules A and M, pages 463 and 476.)

II.

It will be noticed that the act of June 6, 1872 (c. 315, § 2), does *not* authorize this reduction upon articles of which cotton is the *material* of chief value; but only on those of which it "is *the component part* of chief value."

The skilled labor which went into these flowers was a component—"*the* component part of chief value"—

in them as a vendible commodity. Hence, the rulings and instructions excluding such labor as an element of value were erroneous.

EDWIN B. SMITH,
Assistant Attorney-General.

S. Hamilton's Son, Printer, 61 Cedar Street, N.Y.

In the Supreme Court.

CHESTER A. ARTHUR, Collector, &c.,
Plaintiff in Error,
vs.
LEON RHEIMS,
Defendant in Error.

602.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

Defendant in error imported at New York, in the year 1874, certain artificial flowers, upon which the plaintiff in error as collector assessed a duty of fifty per centum *ad valorem* under the provisions of Section 12 of the Act of June 30, 1864 (13 Stat. at Large, 213) imposing that rate of duty upon "Artificial and ornamental feathers and flowers, or parts thereof, of whatever material composed."

This rate of duty the defendant in error paid under protest, claiming that under the Act of June 6th, 1872, (17 Stat. at Large, 230) the duty upon the artificial flowers imported by him were but

ninety per centum of fifty per centum by virtue of the provision of that act reducing the duties on all manufactures of cotton of which cotton is the component part of chief value," (Record, page 7).

After evidence had been given as to the component materials of the goods in question, the Court below ruled that it was a question of fact for the jury to determine whether cotton was the component part of chief value of the importations in question (Record, fol. 32).

This question was submitted to the jury with instructions as to the time and method of computing the value of the component parts (Record, fols. 35, 36), and the jury found a verdict for the defendant in error (Record, fol. 38).

The principal question presented by the Record is, are the artificial flowers in question dutiable by that name of whatever material composed, being shown to be in fact composed so largely of cotton, that the cotton alone exceeds in value all other materials, or parts, entering into their composition entitled to have applied to them the reduction of duty made by the Act of 1872.

POINTS.

I.

The case of Meyer *vs.* Arthur, 91 U. S., 570, contains the only authoritative construction in this Court of any portion of section two of the Act of 1872.

In that case, Mr. Justice Bradley delivering the opinion of the Court, says:

"When the Act speaks of 'manufactures of metals' it obviously refers to manufactured articles in which metals form a component part. When we speak of manufactures of wood, of leather, or of iron, we refer to articles that have those substances

respectively for their component parts and not to articles in which they have lost their form entirely, and have become the chemical ingredients of new forms."

We submit then, that when we speak of manufactures of cotton, we speak of manufactures in which that substance appears chemically unchanged as the entire, or as one of the component materials or "parts." That the Act in question is not limited to those articles composed solely of cotton is manifest by the use of the phrase "of which cotton is the component part of chief value."

Those words would be idle if the statute was to be limited in its application to manufactures entirely of cotton. The fact found by the jury, by their verdict, that cotton was the component of chief value in the goods in question, we submit is decisive, that the reduction in the duty claimed by the importer ought to have been allowed.

II.

Evidence that muslin, or that artificial flowers were dealt in by different dealers was immaterial—*non constat*, from such fact that the goods in question were not manufactures of cotton.

III.

That labor is a component "part" of an article under the revenue laws is an entirely new suggestion, not supported by authority, and not consonant with right reason, and under such construction, a fine muslin manufactured entirely of cotton, worth ten cents a yard, of which value the cotton is three cents and the labor seven, would not be entitled to the reduction.

Webster's definition of the word part is, "One of the portions, equal or unequal, into which any thing is divided, or regarded as divided; something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others, a larger number, quantity, mass, &c.; a piece; a fragment; a fraction; a division; a number; a constituent. Hence specifically an equal constituent portion; one of several or many like quantities or numbers, or the like, into which any thing is divided, or of which it is made up; proportional division or ingredient."

WM. STANLEY,
STEPHEN G. CLARKE,
Counsel for Def'ts, in error.